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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

LORI DETERS, Plaintiff and Respondent, v. JUAN CARLOS CASTRO-CARRANZA, Defendant and Appellant.	B290935 (Los Angeles County Super. Ct. No. BC573143)

APPEAL from a judgment of the Superior Court of Los Angeles County, Stephen M. Moloney, Judge. Affirmed.

Ford, Walker, Haggerty & Behar, Robert L. Reisinger, Edye A. Hill, and Adam C. Hackett, for Defendant and Appellant.

Law Offices of Robert P. Finn and Robert P. Finn for Plaintiff and Respondent.

Defendant and appellant Juan Carlos Castro-Carranza (Castro-Carranza) struck plaintiff and respondent Lori Deters (Deters) with his automobile as she crossed a street. A jury awarded Deters, among other things, $150,000 in future noneconomic (i.e., pain and suffering) damages. We are asked to determine whether this award was excessive because the jury did not award Deters any future economic (i.e., medical treatment) damages.

I. BACKGROUND

Early in the morning on October 16, 2014, Castro-Carranza was driving to get coffee, turned left at an intersection, and hit Deters as she was walking across the street in a crosswalk. The collision propelled Deters onto the hood of Castro-Carranza's car, and she rolled up near the windshield before rolling off the car and onto the pavement. Castro-Carranza heard Deters screaming, stopped his car, and called 911.

Deters later brought a personal injury lawsuit against Castro-Carranza. At trial, Castro-Carranza admitted liability for the accident but contested the amount of damages sought by Deters.

Deters testified she suffered daily from pain in her hips, left leg, left knee, and left shoulder, as well as headaches and back pain, although the back pain had been much reduced by surgery she underwent 32 months after the accident. Deters testified there was very little she could do to relieve the pain besides take her medications, stretch, and "then pretty much grin and bear it." Deters explained the pain forced her to curtail many activities—including taking college classes, attending to household chores, and roller skating. Deters further testified the

ongoing pain also disturbed her sleep at night: "I find myself waking up multiple times in the night because I have pains. If I move over to the wrong way or flip over to a side, it sends shooting pains which causes me to wake up and be in pain and scream."

Deters' significant other, Aaron Culpepper (Culpepper), testified similarly about Deters' post-accident complaints about pain. According to Culpepper, Deters wakes up screaming "if not every night . . . [then] every other night." In Culpepper's opinion, Deters' daily activity level was approximately 10 percent of what it had been before the accident.

Dr. Jacob Tauber (Tauber), a board-certified orthopedic surgeon who began treating Deters approximately two and a half years after the accident and who testified as Deters' medical expert, explained that before undergoing back surgery in June 2017, Deters complained to him of "constant" pain in her left shoulder, left knee, left ankle, and in her hips; in addition, she described "ongoing" anxiety. Tauber opined that Deters' complaints of pain in her back, left shoulder, and left knee were "causally related" to the accident. After back surgery, Deters continued to complain of pain in her left shoulder, left knee, left ankle, and in her hips, as well as residual pain in her back. Tauber opined that although Deters' back surgery had reduced her pain, she would "suffer from chronic pain in the low back for the rest of her life." In Tauber's opinion, Deters required further treatment to her left shoulder and left knee, including arthroscopic surgery on the knee, and would require "lifelong medications."

In his defense, Castro-Carranza called his own expert to testify: Douglas Keister (Keister), a board-certified orthopedic

surgeon. Keister, based on his review of records and his examination of Deters, opined that the cause of Deters' back pain was degenerative in nature, not traumatic, and that her back condition had become symptomatic prior to the accident. Keister also believed Deters' shoulder injury predated the accident. Regarding future pain and suffering, Keister testified it was "quite clear" Deters did not suffer any "residuals" as a result of the accident—that is, Deters did not suffer from "any type of abnormal anatomy, any type of residual complaints, any type of residual findings that would cause her discomfort or loss of function." He specifically ruled out any need for knee surgery in the future.

The jury found Castro-Carranza liable for negligence. Calculating past economic loss (medical expenses), the jury awarded Deters an amount stipulated to by the parties: $28,406.69. For past noneconomic loss (physical pain and mental suffering), the jury awarded Deters $85,000. With regard to Deters' future damages, the jury awarded her nothing for future economic loss but $150,000 for future noneconomic loss.

Castro-Carranza subsequently moved for a new trial on the "limited issue" of future noneconomic damages. The trial court denied the motion. The court rejected Castro-Carranza's argument that future *non*economic damages (pain and suffering) must be premised on an award of future economic damages (medical treatment costs), relying on California precedent that holds to the contrary. The court found there was evidence at trial giving the jury a proper basis for "awarding damages for future pain and suffering even if it found that [Deters] would not require future medical treatment for her complaints." The trial court also rejected Castro-Carranza's argument that the noneconomic

damages award must be vacated or reduced because the 8:1 ratio he calculated between Deters' total noneconomic damages ($235,000) and total economic damages ($28,406.69) was irrational.

II. DISCUSSION

Castro-Carranza continues to press on appeal the same two arguments made and rejected in the trial court.

He argues the $150,000 award for future pain and suffering was "clearly excessive and a result of passion and prejudice" because the jury did not award Deters anything for future medical costs. Castro-Carranza's argument is logically and legally flawed. Pain and suffering can exist independently of medical costs; one can suffer physical pain and emotional distress without necessarily incurring medical expense. The proper inquiry on appeal is not whether the award for future pain and suffering is predicated on future medical costs, but whether the award is supported by substantial evidence—which it is—and whether the amount awarded shocks the conscience—which it does not.

Castro-Carranza also maintains the award for future pain and suffering was excessive because the ratio of total noneconomic damages to total economic damages was not a "rational ratio." We reject this argument because it is unsupported by California law: courts must ensure that a noneconomic damages award does not shock the conscience, but courts need not ensure noneconomic and economic damages fall within some sort of presumptively permissible ratio.

A. Standard of Review

"The amount of damages is a fact question, first committed to the discretion of the jury and next to the discretion of the trial judge on a motion for new trial." (*Seffert v. Los Angeles Transit Lines* (1961) 56 Cal.2d 498, 506 (*Seffert*); accord, *Pool v. City of Oakland* (1986) 42 Cal.3d 1051, 1067.) On a motion for a new trial due to excessive damages or any other statutory ground (Code Civ. Proc., § 657), the trial court acts as an "'independent trier of fact'" (*Lane v. Hughes Aircraft Co.* (2000) 22 Cal.4th 405, 412), and is free to "'"review conflicting evidence, weigh its sufficiency, consider credibility of witnesses, reject any testimony believed false and draw any reasonable inferences from the evidence."' [Citation.]" (*Baker v. American Horticulture Supply, Inc.* (2010) 186 Cal.App.4th 1059, 1069.)

In assessing the reasonableness of an award of noneconomic damages, the power of a reviewing court "differs materially" from that of the trial court. (*Seffert*, *supra*, 56 Cal.2d at p. 507.) "An appellate court can interfere on the ground that the judgment is excessive only on the ground that the verdict is so large that, at first blush, it shocks the conscience and suggests passion, prejudice or corruption on the part of the jury." (*Ibid.*; see also *id.* at p. 508 ["Basically, the question that should be decided by the appellate courts is whether or not the verdict is so out of line with reason that it shocks the conscience and necessarily implies that the verdict must have been the result of passion and prejudice"].)

Accordingly, "[w]e review the jury's damages award for substantial evidence, giving due deference to the jury's verdict and the trial court's denial of the new trial motion. [Citations.] 'In considering the contention that the damages are excessive the

appellate court must determine every conflict in the evidence in respondent's favor, and must give him the benefit of every inference reasonably to be drawn from the record.'" (*Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 300; see also *Knutson v. Foster* (2018) 25 Cal.App.5th 1075, 1096 ["[T]he testimony of a single person, *including the plaintiff*, may be sufficient to support an award of [noneconomic] damages"].)

B. The Law Regarding Noneconomic Damage Awards

"Noneconomic damages compensate an injured plaintiff for nonpecuniary injuries, including pain and suffering." (*Corenbaum v. Lampkin* (2013) 215 Cal.App.4th 1308, 1332 (*Corenbaum*).) Pain and suffering "encompass[ ] physical pain and various forms of mental anguish and emotional distress" (*ibid.*) and "are detriment factors for which an injured plaintiff must be compensated if [they] are caused by defendant's tort." (*Hilliard v. A.H. Robins Co.* (1983) 148 Cal.App.3d 374, 413 (*Hilliard*).)

Pain and suffering are terms that "refer to subjective states, representing a detriment which can be translated into monetary loss only with great difficulty." (*Capelouto v. Kaiser Foundation Hospitals* (1972) 7 Cal.3d 889, 893; accord, *Beagle v. Vasold* (1966) 65 Cal.2d 166, 172; *Torres v. Los Angeles* (1962) 58 Cal.2d 35, 53 ["Because injuries are rarely identical in nature and the amount of pain and suffering endured as a result of similar physical injuries varies greatly, the extent of damages suffered cannot be measured by an absolute monetary standard"]; *Corenbaum*, *supra*, 215 Cal.App.4th at p. 1332 ["[Noneconomic] injuries are subjective, and the determination of the amount of damages by the trier of fact is equally subjective"].)

A jury has "relatively unfettered authority and responsibility to calculate damages for pain and suffering" (*Garfoot v. Avila* (1989) 213 Cal.App.3d 1205, 1210), provided its determination is reasonable. (Civ. Code, § 3359 ["Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered"]; *Hilliard*, *supra*, 148 Cal.App.3d at p. 412 ["There is no convenient yard stick to determine whether a jury's damage award is excessive, too little, or just right. The legal test is one of reasonable compensation"].)

An injured plaintiff may be compensated not only for pain and suffering "'which have occurred up to the time of the trial'" (*Bellman v. San Francisco High School Dist.* (1938) 11 Cal.2d 576, 588 (*Bellman*)), but also for pain and suffering that "'[are] reasonably certain under the evidence [to] follow in the future.'" (*Ibid.*; accord, *Scognamillo v. Herrick* (2003) 106 Cal.App.4th 1139, 1151.) With respect to prospective damages, "[t]he jury may not consider consequences which are only likely to occur. 'To entitle a plaintiff to recover present damages for apprehended future consequences, there must be evidence to show such a degree of probability of their occurring as amounts to a reasonable certainty that they will result from the original injury.' [Citations.]" (*Bellman*, *supra*, at p. 588; accord, *Garcia v. Duro Dyne Corp.* (2007) 156 Cal.App.4th 92, 97-98; CACI No. 3905A.)

C. There Is No Reason to Reverse the Jury's Noneconomic Damages Award

The $150,000 award for future noneconomic damages is supported by substantial evidence it was reasonably certain that Deters would experience pain and suffering in the future. Deters testified that despite the relative success of her back surgery, she continued to suffer from a number of physical complaints that only arose after the accident (e.g., residual back pain, pain in her left shoulder, left knee, left ankle, and hips). In addition, she testified her pain had adverse effects on her life, from routinely disturbing her sleep to sharply limiting her educational and recreational activities. Deters' testimony in this regard was uncontroverted. It was also backed by her medical expert, Dr. Tauber, who testified that Deters would suffer chronic pain for the rest of her life.

That is substantial evidence justifying the jury's calculation of future noneconomic damages. The fact that the award for future pain and suffering ($150,000) was almost double that of the award for past pain and suffering ($85,000) is not troubling. The award for future pain and suffering is meant to compensate Deters for pain throughout her life expectancy; it does not "at first blush" shock the conscience or suggest passion, prejudice, or corruption (*Seffert*, *supra*, 56 Cal.2d at p. 507); and it was significantly less than the amount suggested by Deters' counsel during closing argument ($600,000 or more).

Coming to the real crux of the appeal, the fact that the jury did not award Deters any compensation for future medical costs is unimportant to our analysis and *Major v. Western Home Ins. Co.* (2009) 169 Cal.App.4th 1197 (*Major*) is not to the contrary. In *Major*, the Court of Appeal affirmed an award of $450,000 in

emotional distress damages because the plaintiff had made a threshold showing of financial loss. (*Id.* at pp. 1214-1216.) *Major*, however, was an insurance bad faith action, and in insurance bad faith actions "emotional distress damages must be tied to actual, not merely potential, economic loss" because "'[i]n the absence of any economic loss there is no invasion of [the insureds'] property rights to which their alleged emotional distress over [the insurer's] denial and delay could be incidentally attached.'" (*Id.* at p. 1214.)

In contrast, under law that is apposite here, a personal injury plaintiff can recover noneconomic damages without first proving economic damages. (*Hilliard*, *supra*, 148 Cal.App.3d at pp. 412-413.) In *Hilliard*, for example, the manufacturer of an intrauterine device claimed that a $600,000 compensatory award to the plaintiff was excessive because plaintiff presented "no evidence" of any special damages or monetary loss. (*Id.* at p. 412.) The Court of Appeal was unpersuaded: "There is no requirement in California law that a plaintiff seeking compensatory damages which include damages for pain and suffering . . . must prove actual special damages such as medical expenses . . . . [¶] . . . [¶] Pain and suffering are detriment factors for which an injured plaintiff must be compensated if these detriment factors are caused by defendant's tort. [Citation.] The absence of medical bills or medical testimony will not foreclose a recovery for pain and suffering. [Citation.]" (*Id.* at pp. 412-413; accord, *Westphal v. Wal-Mart Stores, Inc.* (1998) 68 Cal.App.4th 1071, 1078-1079 ["[T]here is no specific requirement that any special damages be awarded before general damages may be awarded. [Citation.] For example, *Sommer v. Gabor*[(1995)] 40 Cal.App.4th 1455, [1470-1471] upheld a $2 million general

damages award despite the absence of special damages"] (*Westphal*).)

Thompson v. John Strona & Sons (1970) 5 Cal.App.3d 705 (*Thompson*), which Castro-Carranza also cites, is also inapt authority here. The trial court in that case granted a new trial to the defendant on the ground that a general damages award of $24,567.50 was excessive because the plaintiff's total special medical damages were only $432.50, "a considerable amount of which was incurred for medical examinations rather than required treatment." (*Id*. at pp. 707-708.) The Court of Appeal affirmed, holding that the general damages award was "excessive and unsupported by substantial evidence." (*Id*. at p. 712.) In *Thompson*, unlike here, there was "indisputable evidence to the effect that plaintiff will incur no future medical expense." (*Id*. at p. 710.) In *Thompson*, unlike here, there was "no evidence that plaintiff has suffered or in the future will suffer any specific loss of earnings flowing from the accident." (*Id*. at p. 711.) And most significantly, in *Thompson* the trial judge ruling on the motion for new trial (sitting as the "thirteenth juror") concluded the damages award was excessive and the Court of Appeal affirmed *that* determination under the deferential standard of review that applies. The trial judge here made the opposite determination (on a dissimilar factual record), and the same standard of review applied in *Thompson* directs us to let stand the noneconomic damages award to Deters.

The second of Castro-Carranza's arguments—that the ratio between noneconomic and economic damages is not "rational" and the noneconomic damages award must be reduced or vacated solely for that reason—runs contrary to established law. It has long been recognized that "[t]he ratio between special and general

damages is not controlling" due to differences in calculability for those types of damages. (*Wood v. Davenport* (1954) 127 Cal.App.2d 247, 252; accord, *Westphal*, *supra*, 68 Cal.App.4th at p. 1078 ["[T]here is no specific requirement that any special damages be awarded before general damages may be awarded"]; see also *Damele v. Mack Trucks, Inc.* (1990) 219 Cal.App.3d 29, 38 [rejecting defendant's argument that award of $568,000 in general/noneconomic damages was excessive where special/economic damages were only $82,000, stating: "The law does not prescribe a definite standard or method to calculate compensation for pain and suffering. The jury is merely required to award an amount that is reasonable in light of the evidence"].) As we have already explained, the $150,000 award of future pain and suffering damages to Deters is supported by substantial evidence and not "so disproportionate to the injuries suffered that the result reached may be said to shock the conscience." (*Daggett v. Atchison, T & S.F. Ry. Co.* (1957) 48 Cal.2d 655, 666.) There is accordingly no basis for reversal.

DISPOSITION

The judgment is affirmed. Deters shall recover her costs on appeal.

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BAKER, J.

We concur:

RUBIN, P. J.

MOOR, J.